IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17957 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UNIQUE CREATIONS LTD.

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 17957 of 2003

MR BB NAIK for Petitioner No. 1-4

MS DHARMISHTA RAVAL for Respondent No. 1

..... for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 15/03/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

RULE. Ms Dharmishta Raval, learned Senior Standing Counsel for the Central Government waives service of Rule.

In the facts and circumstances of the case, the petition is taken up for final disposal today.

2. What is challenged in this petition under Article 226 of the Constitution is the order dated 21.8.2003 passed by the Commissioner (Appeals-I) Central Excise, Ahmedabad being Stay Order Nos.192 to 196 of 2003 (Annexure "E") by which the petitioners are required to make a pre-deposit of Rs.3 lakhs towards duty, Rs. 4 lakhs towards penalty in Appeal No.328 of 2001, Rs.25,000/- each in Appeal Nos.324, 326 and 327 of 2001 and Rs.50,000/- in Appeal No.325 of 2001.

While the penalty of Rs.4 lakhs is required to be pre-deposited in the appeal filed by the Company challenging both duty and penalty, the other penalties are required to be paid by the Directors of the petitioner-Company.

3. We have heard Mr BB Naik, learned counsel for the petitioner and Ms Dharmishta Raval, learned Senior Standing Counsel for the respondents.

4. Since the challenge is only to the order of pre-deposit, we have not permitted the learned counsel to advance any submissions on the merits of the controversy which is pending before the appellate authority. However, since apart from the duty amount of Rs.3 lakhs, the petitioners are also required to pay penalty of various amounts mentioned above, it appears to us that the ends of justice would be met if the petitioners are required to pay only Rs.3 lakhs towards duty as per the impugned order of the Commissioner (Appeals) and payment of the amounts of penalty is waived.

Since, as stated by Mr Naik, out of the amount of Rs.3 lakhs, the petitioner-Company has already deposited Rs.1 lakh with respondent No.2, as per the direction of this Court while issuing notice on 24.12.2003, it is directed that the balance amount of Rs.2 lakhs shall be deposited by petitioner No.1-Company with respondent No.2 in ten equal monthly installments of Rs.20,000/- each, the first installment shall commence from 5th April 2004. In case there are two defaults, this order shall become inoperative and the petitioner shall be liable to pay the amount of pre-deposit as per the impugned order dated 21.8.2003.

5. As far as the liability to pay interest on the duty amount is concerned, we are not passing any orders at this stage but ultimately if it is held in the appeal that the petitioner-Company is liable to pay the duty amount, this order shall not come in the way of the department levying, demanding and recovering interest in accordance with law.

6. The petition is accordingly disposed of in the aforesaid terms.

Rule is made absolute to the aforesaid extent.

(M.S. SHAH, J.)

(A.M.KAPADIA, J.)
zgs/-